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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2015-15;

Application No. D-11696]

Notice of Exemption involving Deutsche Bank AG (Deutsche Bank or the Applicant)

Located in Frankfurt, Germany

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of Temporary Exemption.

SUMMARY: This document contains a temporary exemption issued by the Department of Labor (the Department). The exemption permits certain entities with specified relationships to Deutsche Bank to continue to rely upon the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14, for a period of nine months, following the criminal conviction of Deutsche Securities Korea Co. (Deutsche Securities Korea Co. or DSK) for spot/futures-linked market price manipulation.

EFFECTIVE DATE: This exemption is effective for a period of nine months, beginning on the date (the Conviction Date) that a judgment of conviction against DSK is entered in Seoul Central District Court, South Korea, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services and Capital Markets Act for spot/futures-linked market price manipulation.

FOR FURTHER INFORMATION CONTACT: Scott Ness, telephone (202) 693-8561, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 24, 2015, the Department of Labor (the Department) published a notice of proposed temporary exemption in the Federal Register at 80 FR 51314, for certain entities with specified relationships to Deutsche Bank to continue to rely on the relief provided by Prohibited Transaction Class Exemption (PTE) 84-14,¹

¹ 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

notwithstanding an impending judgment of conviction, in Seoul Central District Court, South Korea, against DSK, which could be entered as early as September 3, 2015, for spot/futures-linked market price manipulation (the Conviction).

This exemption was requested by Deutsche Bank pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, this notice of temporary exemption is being issued solely by the Department.

As noted in the proposed exemption, once DSK is convicted, asset managers affiliated with DSK (the DB QPAMs) will be unable to rely on the relief provided by PTE 84-14. In this regard, Section I(g) of PTE 84-14 precludes a person who may otherwise meet the definition of a QPAM from relying on the relief provided by that class exemption

if that person or its "affiliate" has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described therein. This exemption preserves the ability of DB QPAMs to continue to rely on the relief provided by PTE 84-14, following the Conviction, for a period of nine months beginning on the Conviction Date, as long as the conditions herein are met. Absent this temporary relief, plans and IRAs with assets managed by the DB QPAMs may incur substantial costs in being forced to liquidate and reinvest their portfolios, and hire new investment managers on short notice. This exemption insulates these plans and IRAs from such sudden costs and/or losses, in a manner that is protective of the plans and IRAs.

Following Deutsche Bank's submission of Exemption Application No. D-11696, which is the subject of this exemption (the First Request), Deutsche Bank filed an additional exemption application (Exemption Application No. D-11856, hereinafter, the Second Request) regarding an additional impending criminal conviction. The Second Request seeks exemptive relief for DB QPAMs to continue to rely on PTE 84-14 for a period of ten years, notwithstanding both: the criminal conviction of DSK for

market manipulation that is the subject of this exemption; and the criminal conviction of a Deutsche Bank affiliate, DB Group Services UK Limited, for one count of wire fraud in connection with its role in manipulating LIBOR.

The Department has tentatively denied the Second Request, upon initially determining that the exemption sought is not in the interest of affected plans and IRAs, and not protective of those plans and IRAs. If the Department makes a final decision not to propose the Second Request, the DB QPAMs will be unable to rely on the relief set forth in PTE 84-14 upon the earlier of the day that follows the nine month term of this exemption, or the date any of the conditions herein are not met. The Department notes that Deutsche Bank has requested a conference to afford Deutsche Bank the opportunity to provide additional information in support of its exemption request. Following the conference, the Department will review the entire record, including any additional information provided in connection with the conference, before determining whether to continue processing the Second Request.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments and/or requests for a public

hearing with respect to the notice of proposed exemption published in the Federal Register on August 24, 2015. The Department did not receive any comments or requests for a hearing.

This exemption contains several conditions, including an audit to be performed by an independent auditor that is designed to ensure legal compliance by each DB QPAM by requiring rigorous training on fiduciary duties and ethical conduct, as outlined in Subsections I(e) and (f). In addition, each DB QPAM is generally required to permit plans and IRAs to transfer their assets to another asset manager without imposing an additional fee, penalty, or charge on such plan or IRA. Also, the DB QPAMs may not require that plans or IRAs insulate the QPAM from liability for violating ERISA or the Code or engaging in prohibited transactions.

As a final note, the Department stresses that the act of selecting and retaining an investment manager service provider is a fiduciary act; and that a plan fiduciary is under a continuing duty to monitor the service provider's performance at reasonable intervals. Fiduciaries (including investment managers) should be reviewed by the appointing fiduciaries in such a manner as may be reasonably expected to ensure that their performance has

been in compliance with the terms of the plan and statutory standards (e.g., prudence, exclusive benefit, and prohibited transactions rules). Such review may cause the appointing fiduciary to reconsider the prudence of employing the fiduciary as a service provider to its ERISA-covered plan.

The Department has decided to grant this temporary exemption after giving full consideration to: the types of transactions covered by this exemption; the potential harm to plans and IRAs if temporary relief is not granted; and the protective nature of the conditions imposed herein. The complete application file, with copies of the comments, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on August 24, 2015, at 80 FR 51314.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c) (2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of the plan and of its participants and beneficiaries, and the exemption is

protective of the rights of participants and beneficiaries of the plan;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

Section I: Covered Transactions

The DB QPAMs (as defined in Section II(b)) shall not be precluded from relying on the exemptive relief provided

by Prohibited Transaction Exemption (PTE) 84-14,² notwithstanding the Conviction (as defined in Section II(a)), for a period of nine months beginning on the date of the Conviction (the Conviction Date), provided that the following conditions are satisfied:

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such DB QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DSK that is the subject of the Conviction;

(b) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the Conviction;

(c) The DB QPAMs did not directly receive compensation in connection with the criminal conduct that is the subject of the Conviction;

(d) A DB QPAM will not use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA and managed by such DB QPAM to enter into any transaction with DSK or engage DSK to provide additional services to such investment fund, for a direct or indirect fee borne by such investment fund

² 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

regardless of whether such transactions or services may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e)(1) Each DB QPAM immediately develops, implements, maintains, and follows written policies (the Policies) requiring and reasonably designed to ensure that: (i) the asset management decisions of the DB QPAM are conducted independently of Deutsche Bank's management and business activities; (ii) the DB QPAM fully complies with ERISA's fiduciary duties and ERISA and the Code's prohibited transaction provisions and does not knowingly participate in any violations of these duties and provisions with respect to ERISA-covered plans and IRAs; (iii) the DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to ERISA-covered plans and IRAs; (iv) any filings or statements made by the DB QPAM to regulators, including but not limited to, the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of ERISA-covered plans or IRAs are materially accurate and complete, to the best of such QPAM's knowledge at that time; (v) the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with

respect to ERISA-covered plans or IRAs, or make material misrepresentations or omit material information in its communications with ERISA-covered plan and IRA clients;

(vi) the DB QPAM complies with the terms of this exemption; and (vii) any violations of or failure to comply with items (ii) through (vi) are corrected promptly upon discovery and any such violations or compliance failures not promptly corrected are reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of Compliance, and the General Counsel of the relevant DB QPAM, the independent auditor responsible for reviewing compliance with the Policies, and a fiduciary of any affected ERISA-covered plan or IRA where such fiduciary is independent of Deutsche Bank; however, with respect to any ERISA-covered plan or IRA sponsored by an "affiliate" (as defined in Section VI(d) of PTE 84-14) of Deutsche Bank or beneficially owned by an employee of Deutsche Bank or its affiliates, such fiduciary does not need to be independent of Deutsche Bank; DB QPAMs will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that they correct any instances of noncompliance promptly when discovered or when they reasonably should have known of the noncompliance (whichever is earlier), and provided that

they adhere to the reporting requirements set forth in this item (vii);

(2) Each DB QPAM immediately develops and implements a program of training (the Training), conducted at least annually for relevant DB QPAM asset management, legal, compliance, and internal audit personnel; the Training shall be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions) and ethical conduct, the consequences for not complying with the conditions of this exemption, (including the loss of the exemptive relief provided herein), and prompt reporting of wrongdoing;

(f)(1) Each DB QPAM submits to an audit conducted by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA to evaluate the adequacy of, and compliance with, the Policies and Training described herein; the audit requirement must be incorporated in the Policies. The audit must cover the time period during which this exemption is effective, and must be completed no later than three (3) months after the period to which the audit applies;

(2) To the extent necessary for the auditor, in its

sole opinion, to complete its audit and comply with the conditions for relief described herein, and as permitted by law, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems, business records, transactional data, workplace locations, training materials, and personnel;

(3) The auditor's engagement shall specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed Policies in accordance with the conditions of this exemption and developed and implemented the Training, as required herein;

(4) The auditor's engagement shall specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor shall issue a written report (the Audit Report) to Deutsche Bank and the DB QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of, and compliance with, the Policies and Training; the auditor's recommendations (if any) with respect to strengthening such Policies and Training; and any instances of the respective

DB QPAM's noncompliance with the written Policies and Training described in Section I(e) above. Any determinations made by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective DB QPAM shall be promptly addressed by such DB QPAM, and any actions taken by such DB QPAM to address such recommendations shall be included in an addendum to the Audit Report. Any determinations by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training shall not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that the DB QPAM has complied with the requirements under this subsection must be based on evidence that demonstrates the DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption, and not solely on evidence that demonstrates that the DB QPAM has not violated ERISA;

(6) The auditor shall notify the respective DB QPAM of any instances of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit

has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies, certifies, in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; and addressed, corrected, or remedied any inadequacies identified in the Audit Report;

(8) An executive officer of Deutsche Bank reviews the Audit Report for each DB QPAM and certifies in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each DB QPAM provides its certified Audit Report to the Department's Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington DC 20210, no later than 30 days following its completion, and each DB QPAM makes its Audit Report unconditionally available for examination by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of an ERISA-covered plan or IRA, the assets of which are managed by such DB QPAM;

(10) Each DB QPAM and the auditor will submit to OED (A) any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, and (B)

any engagement agreement entered into with any other entities retained in connection with such QPAM's compliance with the Training or Policies conditions of this exemption, no later than three (3) months after the date of the Conviction (and one month after the execution of any agreement thereafter);

(11) The auditor shall provide OED, upon request, all of the workpapers created and utilized in the course of the audit, including, but not limited to: the audit plan, audit testing, identification of any instances of noncompliance by the relevant DB QPAM, and an explanation of any corrective or remedial actions taken by the applicable DB QPAM; and

(12) Deutsche Bank must notify the Department at least 30 days prior to any substitution of an auditor, except that no such replacement will meet the requirements of this paragraph unless and until Deutsche Bank demonstrates to the Department's satisfaction that such new auditor is independent of Deutsche Bank, experienced in the matters that are the subject of the exemption, and capable of making the determinations required of this exemption;

(g) With respect to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services, each DB QPAM agrees: (1)

to comply with ERISA and the Code, as applicable with respect to such ERISA-covered plan or IRA, and refrain from engaging in prohibited transactions that are not otherwise exempt; (2) not to waive (or cause to be waived), limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions; (3) not to require the ERISA-covered plan or IRA (or sponsor of such ERISA-covered plan or beneficial owner of such IRA) to indemnify the DB QPAM for violating ERISA or engaging in prohibited transactions, except for violations or prohibited transactions caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank; (4) not to restrict the ability of such ERISA-covered plan or IRA to terminate or withdraw from its arrangement with the DB QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such restrictions are applied consistently and in like manner to all such investors; and (5) not to impose any fees, penalties, or charges for such termination or withdrawal

with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors. Within two (2) months of the date of publication of this notice of exemption in the Federal Register, each DB QPAM will provide a notice of its obligations under this Section I(g) to each ERISA-covered plan or IRA for which a DB QPAM provides asset management or other discretionary fiduciary services;

(h) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such DB QPAM relies upon the relief in the exemption; and

(i) The DB QPAMs comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) that is attributable to the Conviction;

(j) The DB QPAMs will not employ any of the individuals that engaged in the spot/futures-linked market manipulation activities that led to the Conviction;

(k) The DB QPAMs will provide a notice of the proposed exemption and this notice of temporary exemption, along with a separate summary describing the facts that led to the Conviction as well as a statement that Deutsche Bank has made a separate exemption request, in Application No. D-11856, in connection with the potential conviction of DB Group Services UK Limited for one count of wire fraud in connection with DB Group Services UK Limited's role in manipulating LIBOR, which has been submitted to the Department, and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84-14 to each sponsor of an ERISA-covered plan and each beneficial owner of an IRA invested in an investment fund managed by a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund;

(l) Deutsche Bank disgorged all of its profits generated by the spot/futures-linked market manipulation activities of DSK personnel that led to the Conviction;

(m) Deutsche Bank imposes internal procedures, controls, and protocols on DSK designed to reduce the

likelihood of any recurrence of the conduct that is the subject of the Conviction, to the extent permitted by local law;

(n) DSK has not, and will not, provide fiduciary or QPAM services to ERISA-covered plans or IRAs, and will not otherwise exercise discretionary control over plan assets;

(o) No DB QPAM is a subsidiary of DSK, and DSK is not a subsidiary of any DB QPAM;

(p) The criminal conduct of DSK that is the subject of the Conviction did not directly or indirectly involve the assets of any plan subject to Part 4 of Title I of ERISA or section 4975 of the Code; and

(q) A DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy the conditions for relief under this exemption described in Sections I(d), (e), (f), (g), (h), (i), and (k).

Section II: Definitions

(a) The term "Conviction" means the judgment of conviction against DSK to be entered on or about September 3, 2015, in Seoul Central District Court, South Korea, relating to charges filed against DSK under Articles 176, 443, and 448 of South Korea's Financial Investment Services

and Capital Markets Act for spot/futures-linked market price manipulation;

(b) The term "DB QPAM" means a "qualified professional asset manager" (as defined in section VI(a)³ of PTE 84-14) that relies on the relief provided by PTE 84-14 and with respect to which DSK is a current or future "affiliate" (as defined in section VI(d) of PTE 84-14); and

(c) The term "DSK" means Deutsche Securities Korea Co., a South Korean "affiliate" of Deutsche Bank (as defined in section VI(c) of PTE 84-14).

Signed at Washington, DC, this 1st day of September 2015.

Lyssa Hall
Director of Exemption
Determinations
Employee Benefits Security
Administration
U.S. Department of Labor

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³ In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.